

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**MARCO ANTONIO NUNEZ-RAMOS,**

**Defendant.**

**Case No.   06-20141  
              09-2117**

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**MEMORANDUM AND ORDER**

Defendant Marco Antonio Nunez-Ramos has filed 28 U.S.C. § 2255 petition challenging his conviction and sentence (doc. 56). The Government has filed a Motion to Enforce (doc. 61), asking this court to uphold the waiver in Mr. Nunez-Ramos's plea agreement that prohibits collateral attacks. Mr. Nunez-Ramos has requested an extension of time to respond to this motion (doc. 65). The court will grant that request, and allow Mr. Nunez-Ramos until August 21, 2009 to respond. The Government will then have until September 11, 2009 to file a reply, should it wish to do so.

Mr. Nunez-Ramos has also filed a Motion for Documents (doc. 59), asking that this court provide him with various documents so that he can "perfect his pending Motion Under 28 U.S.C. § 2255." Specifically, Mr. Nunez-Ramos asks for a copy of the police report, motions filed by defense counsel, all search warrants and affidavits, and receipts for cash or other items.

The Tenth Circuit has previously looked to 28 U.S.C. § 753(f), the statutory provision governing copies of transcripts to defendants, to resolve requests for other court documents. *See, e.g., Nortonsen v. Larimer County Dist. Court*, 2006 WL 1086437 (10th Cir. Apr. 26, 2006); *United States v. Lewis*, 1994 WL 563442 (10th Cir. Oct. 14, 1994). Section 753(f) allows free copies of transcripts if the court “certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal.” 28 U.S.C. § 753(f); *see also Nortonsen*, 2006 WL 1086437, at \*1 (holding that post-conviction prisoners do not have an automatic right to free copies of court documents and concluding that they must first demonstrate a nonfrivolous claim); *Lewis*, 1994 WL 563442, at \*1 (applying the § 753(f) standard to a defendant’s request for documents).

The current issue presented in this case is that raised in the Government’s motion to enforce—whether Mr. Nunez-Ramos’s waiver of his right to collaterally attack his conviction and sentence is valid and enforceable. The documents Mr. Nunez-Ramos requested do not bear on that issue. Nothing in the police reports, defense motions, warrants, affidavits, or property receipts will assist Mr. Nunez-Ramos in opposing the enforcement of the waiver in his plea agreement. The documents are thus not necessary at this time. Should the motion to enforce be denied, Mr. Nunez-Ramos is free to refile his motion for documents, and the court will then evaluate his request as applied to the issues presented by his § 2255 petition.

**IT IS THEREFORE ORDERED BY THE COURT** that defendant's motion for documents (doc. 59) is denied without prejudice. Mr. Nunez-Ramos is free to refile it should the motion to enforce be denied.

**IT IS FURTHER ORDERED** that defendant's motion for an extension of time (doc. 65) is GRANTED. Mr. Nunez-Ramos's response to the Government's Motion to Enforce (doc. 61) must be filed by August 21, 2009. Any reply from the Government must be filed by September 11, 2009.

**IT IS SO ORDERED** this 27th day of May, 2009.

s/ John W. Lungstrum  
John W. Lungstrum  
United States District Judge